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ARIZONA ATTORNEY GENERAL

Honorable James W. Ewing
House of Representatives
Capitol Building
Phoenix, Arizona

Dear Representative:

This is in reply to your oral question regarding yoghurt or yogurt. Yoghurt is the way it is spelled in Turkey where this process seems to have originated but in America the more common way of spelling it is yogurt.

Your question: is the process of making yogurt from whole milk a manufacturing process under our dairy code?

55 C.J.S., page 667, defines manufacturing as follows:

"While it has been said that the word 'manufacture' has a well ascertained and defined meaning, it is not an easy term to define and is not susceptible of an accurate definition that is all-embracing or all-exclusive, but is susceptible of many applications and many meanings. * * * Distinct and apart from its common or ordinary meanings, 'manufacture' may have a broad, comprehensive, generic, or general meaning, or a narrow, limited or particular meaning."

There is no question but what in the broad sense the making of yogurt is manufacturing. The question now is from a narrow, limited or particular meaning: is it a manufacturing process? Our only concern: Is the making of

yogurt a manufacturing process for licensing or taxing purposes? In the case of Standard Tailoring Co. v. City of Louisville, 153 S.W. 764, the court said:

"Where construction of ordinances and statutes is involved, especially in cases involving licenses and exemption cases, the courts have on occasion found it necessary, in carrying out the legislative intent in the use of the word, to limit materially the scope of the general definitions."

Quoting further from 55 C.J.S., page 680, we have the following:

"It has been well stated that it is sometimes difficult to determine with legal exactness what is or what is not manufacturing. * * * In determining what constitutes manufacture there is no hard and fast rule which can be applied generally. Each case must be decided under its own facts, having regard for the sense in which the term may be used in the particular instance, and the intent or purpose to be accomplished. * * *"

We have a number of leading cases which hold that pasteurization and homogenization of milk is not a manufacturing process for taxing purposes and this office has heretofore ruled that the process of homogenization and pasteurization is not a manufacturing process under the Arizona State laws for taxing purposes. The definition given by the Legislature to what manufacture is has stated it as follows:

"(q) 'Milk products manufacturer' is a person engaged in the business of buying or receiving milk or milk products either directly or indirectly from the producer or manufacturer thereof for the purpose of converting such milk or milk products into other such products by a manufacturing process;"

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It is our understanding that in order to make yogurt the individual must heat the milk to a certain temperature, then add a yeast or yogurt that has a chemical reaction on the milk that causes a change in it to the extent that the product derived is not milk any more but is converted into another product. It is our opinion that this process of converting whole milk into yogurt is a manufacturing process for taxing purposes.

Respectfully,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

CR:mw